

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEMETRIUS A. WRIGHT,  
Plaintiff,

v.

A. HEDGPETH, et al.,  
Defendants.

No. C 09-04358 CW (PR)

ORDER DIRECTING CLERK TO FILE  
AND SERVE SECOND AMENDED  
COMPLAINT, DENYING DISCOVERY  
MOTIONS WITHOUT PREJUDICE,  
DENYING DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT WITHOUT  
PREJUDICE

Plaintiff Demetrius A. Wright, a state prisoner incarcerated at Salinas Valley State Prison (SVSP), filed the above-titled pro se civil rights action pursuant to 42 U.S.C. § 1983 claiming the violation of his First Amendment rights. Defendants have filed a motion for summary judgment with respect to the claims raised in Plaintiff's first amended complaint (FAC).

Now pending before the Court are Plaintiff's motions (1) to file a second amended complaint (SAC), (2) to quash Defendants' subpoena seeking access to Plaintiff's central file, (3) to compel discovery, and (4) for an extension of time to oppose Defendants' motion for summary judgment.

A. Second Amended Complaint

Plaintiff asks for leave to file a SAC on the following grounds:

(1) Plaintiff has discovered the identity of the John Doe Defendant named in count 1 of the FAC. The Court had dismissed this claim without prejudice to Plaintiff's moving to amend the FAC should he discover the Doe Defendant's identity. Plaintiff identifies the Defendant in claim 1 as "Jewish Chaplain Friedman."

1 (2) Plaintiff realleges his claims against Defendants G.D.  
2 Lewis and N. Grannis, whom Plaintiff previously named in claim 1 of  
3 the FAC. Plaintiff states that, although the Court found the claim  
4 cognizable, it dismissed the claim against Defendants Lewis and  
5 Grannis and failed to order the FAC served on them.

6 (3) Plaintiff clarifies that Defendant A. Landou, whom the  
7 Court identified in the Order of Service as a Correctional  
8 Sergeant, is an Islamic Chaplain.

9 (4) Plaintiff realleges his claim against Defendants D.  
10 Galloway, R. Mantel and D. Binkele, against whom the Court  
11 previously dismissed Plaintiff's claim 3 in the FAC. Plaintiff  
12 states that these Defendants were not named in claim 3 but,  
13 instead, were named in claim 2, which the Court found cognizable.

14 (5) The Court previously found not cognizable Plaintiff's  
15 claim 3, alleging that his constitutional rights had been violated  
16 by the mishandling of his Qu'ran and the search of his person by  
17 Defendant Newby. Plaintiff now seeks to amend claim 3 by alleging  
18 that the actions complained of were part of a pattern of conduct.  
19 Plaintiff states this claim can be added to the SAC because he  
20 exhausted his administrative remedies with respect thereto since  
21 filing the FAC.

22 The Court GRANTS Plaintiff leave to file a SAC that includes  
23 the allegations set forth at paragraphs 1 through 4 above. The  
24 Court allows Plaintiff to reallege claim 1 against Defendants Lewis  
25 and Grannis, to reallege claim 2 against Defendants Galloway,  
26 Mantel and Binkele and orders the SAC served on all unserved  
27 Defendants.  
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1 Leave to amend to reallege claim 3, as discussed at paragraph  
2 5 above, is DENIED. Plaintiff cannot now add to this action claims  
3 that were not exhausted when the action was filed originally. See  
4 McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002).

5 B. Discovery and Briefing Matters

6 Plaintiff filed a motion to quash a subpoena issued by  
7 Defendants to view the entirety of Plaintiff's central prison file,  
8 and for a protective order to prevent the production of any  
9 information in his central file not relevant to the instant action.  
10 More recently, Plaintiff filed a motion to compel discovery  
11 responses from Defendants. Defendants have not responded to either  
12 of Plaintiff's motions.

13 Plaintiff also has filed a motion for an extension of time to  
14 oppose Defendants' motion for summary judgment.

15 In view of the Court's decision that five Defendants not  
16 previously served must be served with the SAC and respond to the  
17 same claims that are addressed in Defendants' pending motion for  
18 summary judgment, the Court finds it premature to address  
19 Plaintiff's discovery-related motions or to order further briefing  
20 on Defendants' motion for summary judgment.

21 Accordingly, Plaintiff's discovery motions and Defendants'  
22 motion for summary judgment are hereby DENIED without prejudice,  
23 and Plaintiff's request for an extension of time to oppose the  
24 motion for summary judgment is DENIED as moot. The parties may  
25 file renewed motions once all Defendants have been served and the  
26 parties have had the opportunity to engage in further discovery.

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CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. Plaintiff's motion for leave to file a SAC is GRANTED.

The Clerk of the Court shall file the proposed SAC that was docketed as "received" on May 17, 2010 (docket no. 11).

2. Plaintiff's motions to quash and to compel discovery are DENIED without prejudice.

3. Plaintiff's motion for an extension of time to oppose Defendants' motion for summary judgment is DENIED as moot.

4. Defendants' motion for summary judgment is DENIED without prejudice.

5. The portion of the Court's Order of Service dismissing claims against Defendants D. Galloway, R. Mantel, D. Binkele, G.D. Lewis and N. Grannis is VACATED.

6. The Clerk shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the SAC and all attachments thereto (docket no. 11) and a copy of this Order to the following (1) SVSP officials: Deputy Warden G.D. Lewis, Correctional Sergeant D. Galloway, Facility Captain R. Mantel, Facility Captain R. Binkele, and (2) N. Grannis, Chief of the Inmate Appeals Branch for the California Department of Corrections and Rehabilitation in Sacramento.

The Clerk shall also serve a copy of the SAC on Defendants' counsel Jesse Manuel Rivera at the address on the Court's docket.

7. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure requires Defendants to cooperate in saving unnecessary costs of service of the summons and amended complaint.

1 Pursuant to Rule 4, if Defendants, after being notified of this  
2 action and asked by the Court, on behalf of Plaintiff, to waive  
3 service of the summons, fails to do so, Defendants will be required  
4 to bear the cost of such service unless good cause be shown for  
5 their failure to sign and return the waiver form. If service is  
6 waived, this action will proceed as if Defendants had been served  
7 on the date that the waiver is filed, except that pursuant to Rule  
8 12(a)(1)(B), Defendants will not be required to serve and file an  
9 answer before sixty (60) days from the date on which the request  
10 for waiver was sent. (This allows a longer time to respond than  
11 would be required if formal service of summons is necessary.)  
12 Defendants are asked to read the statement set forth at the foot of  
13 the waiver form that more completely describes the duties of the  
14 parties with regard to waiver of service of the summons. If  
15 service is waived after the date provided in the Notice but before  
16 Defendants have been personally served, the Answer shall be due  
17 sixty (60) days from the date on which the request for waiver was  
18 sent or twenty (20) days from the date the waiver form is filed,  
19 whichever is later.

20 8. Defendants shall answer the SAC in accordance with the  
21 Federal Rules of Civil Procedure. The following briefing schedule  
22 shall govern dispositive motions in this action:

23 a. No later than ninety (90) days from the date  
24 Defendants' answer is due, Defendants shall file a motion for  
25 summary judgment or other dispositive motion. The motion shall be  
26 supported by adequate factual documentation and shall conform in  
27 all respects to Federal Rule of Civil Procedure 56. If Defendants  
28 are of the opinion that this case cannot be resolved by summary

1 judgment, Defendants shall so inform the Court prior to the date  
2 the summary judgment motion is due. All papers filed with the  
3 Court shall be promptly served on Plaintiff.

4 b. Plaintiff's opposition to the dispositive motion  
5 shall be filed with the Court and served on Defendants no later  
6 than sixty (60) days after the date on which Defendants' motion is  
7 filed. The Ninth Circuit has held that the following notice should  
8 be given to pro se plaintiffs facing a summary judgment motion:

9 The defendant has made a motion for summary  
10 judgment by which they seek to have your case dismissed.  
11 A motion for summary judgment under Rule 56 of the  
Federal Rules of Civil Procedure will, if granted, end  
your case.

12 Rule 56 tells you what you must do in order to  
13 oppose a motion for summary judgment. Generally, summary  
14 judgment must be granted when there is no genuine issue  
15 of material fact -- that is, if there is no real dispute  
about any fact that would affect the result of your case,  
the party who asked for summary judgment is entitled to  
judgment as a matter of law, which will end your case.  
16 When a party you are suing makes a motion for summary  
judgment that is properly supported by declarations (or  
17 other sworn testimony), you cannot simply rely on what  
your complaint says. Instead, you must set out specific  
18 facts in declarations, depositions, answers to  
interrogatories, or authenticated documents, as provided  
in Rule 56(e), that contradict the facts shown in the  
19 defendant's declarations and documents and show that  
there is a genuine issue of material fact for trial. If  
20 you do not submit your own evidence in opposition,  
summary judgment, if appropriate, may be entered against  
21 you. If summary judgment is granted [in favor of the  
defendants], your case will be dismissed and there will  
22 be no trial.

23 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en  
24 banc).

25 Plaintiff is advised to read Rule 56 of the Federal Rules of  
26 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)  
27 (party opposing summary judgment must come forward with evidence  
28 showing triable issues of material fact on every essential element

1 of his claim). Plaintiff is cautioned that because he bears the  
2 burden of proving his allegations in this case, he must be prepared  
3 to produce evidence in support of those allegations when he files  
4 his opposition to Defendants' dispositive motion. Such evidence  
5 may include sworn declarations from himself and other witnesses to  
6 the incident, and copies of documents authenticated by sworn  
7 declaration. Plaintiff will not be able to avoid summary judgment  
8 simply by repeating the allegations of his amended complaint.

9 c. If Defendants wish to file a reply brief, Defendants  
10 shall do so no later than thirty (30) days after the date  
11 Plaintiff's opposition is filed.

12 d. The motion shall be deemed submitted as of the date  
13 the reply brief is due. No hearing will be held on the motion  
14 unless the Court so orders at a later date.

15 9. Discovery may be taken in this action in accordance with  
16 the Federal Rules of Civil Procedure. Leave of the Court pursuant  
17 to Rule 30(a)(2) is hereby granted to Defendants to depose  
18 Plaintiff and any other necessary witnesses confined in prison.

19 10. All communications by Plaintiff with the Court must be  
20 served on Defendants, or Defendants' counsel once counsel has been  
21 designated, by mailing a true copy of the document to Defendants or  
22 Defendants' counsel.

23 11. It is Plaintiff's responsibility to prosecute this case.  
24 Plaintiff must keep the Court informed of any change of address and  
25 must comply with the Court's orders in a timely fashion.

26 12. Extensions of time are not favored, though reasonable  
27 extensions will be granted. Any motion for an extension of time  
28 must be filed no later than fifteen (15) days prior to the deadline

1 sought to be extended.

2 This Order terminates Docket nos. 21, 27, 28, 30 and 31.

3 IT IS SO ORDERED.

4 DATED: 8/11/2011



CLAUDIA WILKEN

United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIUS A. WRIGHT,

Plaintiff,

v.

A. HEDGEPATH et al,

Defendant.

Case Number: CV09-04358 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 11, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Demetrius Ahmed Wright T65802  
Salinas Valley State Prison  
P.O. Box 1050  
Soledad, CA 93960

Dated: August 11, 2011

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk

United States District Court  
For the Northern District of California